

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE:     Avi Ashter                                 )  
            Ward 058, Block 110, Parcel 00008     ) Shelby County  
            Residential Property                     )  
            Tax Year 2005                            )

## INITIAL DECISION AND ORDER

## Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$12,700	\$76,700	\$89,400	\$35,760

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on June 7, 2006 in Memphis, Tennessee. In attendance at the hearing were Avi Ashter, the appellant, and Shelby County Property Assessor's representative Jonathan Jackson.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a duplex located at 1445 Oak Ridge Drive in Memphis, Tennessee which the taxpayer purchased on June 30, 2001 for \$33,500. According to Mr. Ashter, he subsequently spent approximately \$10,000 on renovations.

The taxpayer maintained that the current appraisal of subject property should be reduced for two reasons. First, Mr. Ashter asserted that the 2005 countywide reappraisal program resulted in an excessive increase in value given his June 30, 2001 purchase of subject property for \$33,500. Second, Mr. Ashter argued that the current appraisal of subject property does not achieve equalization given the assessor's appraisals of the homes at 1427 and 1433 Oak Ridge Drive for \$82,000 and \$71,600 respectively.

The assessor contended that subject property should remain valued at \$89,400. In support of this position, Mr. Jackson introduced a spreadsheet summarizing five comparable sales, Mr. Jackson testified that in his opinion the comparable sales support a value of at least \$89,400.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$40.00 per square foot or \$82,000. As will be discussed below, the administrative judge finds that subject property should be appraised at the low end of the value range indicated by the assessor's comparable sales.

Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the fair market value of subject property as of January 1, 2005 constitutes the relevant issue.<sup>1</sup> The administrative judge finds that the Assessment Appeals Commission has repeatedly rejected arguments based upon the amount by which an appraisal has increased as a consequence of reappraisal. For example, the Commission rejected such an argument in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) reasoning in pertinent part as follows:

The rate of increase in the assessment of the subject property since the last reappraisal or even last year may be alarming but is not evidence that the value is wrong. It is conceivable that values may change dramatically for some properties, even over so short of time as a year. . .

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. . . .

Final Decision and Order at 2.

The administrative judge finds that the taxpayer's purchase lacks probative value for any of several reasons. First, one sale does not necessarily establish market value. As observed by the Arkansas Supreme Court in *Tuthill v. Arkansas County Equalization Board*, 797, S. W. 2d 439, 441 (Ark. 1990):

Certainly, the current purchase price is an important criterion of market value, but it alone does not conclusively determine the market value. An unwary purchaser might pay more than market value for a piece of property, or a real bargain hunter might purchase a piece of property solely because he is getting it for less than market value, and one such isolated sale does not establish market value.

The administrative judge finds that the sales introduced by the assessor indicate a significantly higher range of value for duplexes in the area. Moreover, Mr. Ashter seemingly conceded on cross-examination that he "got a good deal." Second, although Mr. Ashter may have only spent \$10,000 out-of-pocket on renovations, he did not attribute any value to his labor despite doing almost all the work himself. Third, the sale occurred approximately 3.5 years prior to the assessment date and must be considered remote in time.

The administrative judge finds that the taxpayer's equalization argument must be rejected. The administrative judge finds that the April 10, 1984, decision of the State Board of Equalization in *Laurel Hills Apartments, et al.* (Davidson County, Tax Years 1981 and 1982), holds that "as a matter of law property in Tennessee is required to be valued and

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<sup>1</sup> January 1, 2005 constitutes the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

equalized according to the 'Market Value Theory'." As stated by the Board, the Market Value Theory requires that property "be appraised annually at full market value and equalized by application of the appropriate appraisal ratio . . ." *Id.* at 1.

The Assessment Appeals Commission elaborated upon the concept of equalization in *Franklin D. & Mildred J. Herndon* (Montgomery County, Tax Years 1989 and 1990) (June 24, 1991), when it rejected the taxpayer's equalization argument reasoning in pertinent part as follows:

In contending the entire property should be appraised at no more than \$60,000 for 1989 and 1990, the taxpayer is attempting to compare his appraisal with others. There are two flaws in this approach. First, while the taxpayer is certainly entitled to be appraised at no greater percentage of value than other taxpayers in Montgomery County on the basis of equalization, the assessor's proof establishes that this property is not appraised at any higher percentage of value than the level prevailing in Montgomery County for 1989 and 1990. That the taxpayer can find other properties which are more underappraised than average does not entitle him to similar treatment. Secondly, as was the case before the administrative judge, the taxpayer has produced an impressive number of "comparables" but has not adequately indicated how the properties compare to his own in all relevant respects. . . .

Final Decision and Order at 2. See also *Earl and Edith LaFollette*, (Sevier County, Tax Years 1989 and 1990) (June 26, 1991), wherein the Commission rejected the taxpayer's equalization argument reasoning that "[t]he evidence of other tax-appraised values might be relevant if it indicated that properties throughout the county were underappraised . . ." Final Decision and Order at 3.

The administrative judge finds that the assessor's comparable sales should initially receive greatest weight. However, the administrative judge finds that the comparables appear superior to the subject for at least three reasons. First, subject property was constructed in 1943 whereas the comparables were constructed between 1950 and 1966. Second, the comparables are all brick whereas the subject is frame. Third, Mr. Ashter's testimony indicated that four (4) of the five (5) comparables are located closer to the University of Memphis than the subject which enhances their value.

The administrative judge finds that Mr. Jackson's comparables sold for anywhere from \$40.74 to \$51.91 per square foot. Absent additional evidence from the taxpayer, the administrative judge finds subject property should be valued at \$40.00 per square foot or \$82,000.

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$12,700	\$69,300	\$82,000	\$32,800

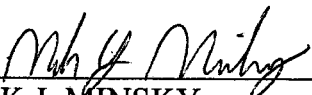
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 14th day of June, 2006.

  
 MARK J. MINSKY  
 ADMINISTRATIVE JUDGE  
 TENNESSEE DEPARTMENT OF STATE  
 ADMINISTRATIVE PROCEDURES DIVISION

c: Avi Ashter  
 Tameaka Stanton-Riley, Appeals Manager